WONG NANG

v.

LOH KIN

HIGH COURT MALAYA, SEREMBAN
WONG KIM FATT JC
[CIVIL APPEAL NO. 11 OF 1981]
4 FEBRUARY 1982

LANDLORD AND TENANT: *Rent-controlled premises - Claim for recovery of portion - Whether tenant mere licensee of portion - Whether acquired any interest in the portion.*

This was an appeal against the decision of the learned Magistrate made on 17 April 1980 dismissing the action of the appellant in respect of his claim for vacant possession of portion B and C of a rent-controlled premises known as No. 28, Templer Road, Seremban. The appellant was the landlord and the respondent tenant of portions A and B of the ground floor of the premises. This appeal was in respect of portion C, a cubicle between the ground floor and the ceiling of the ground floor.

As the respondent failed to comply with the appellant's notice to deliver vacant possession of portions B and C, the appellant filed the civil action.

The Counsel for the appellant relied on the case of *Chin See Lian, v. Ng Wan Pit* [1973] 1 MLJ 115 and contended that the respondent was a mere licensee in respect of portion C and therefore possession of portion C should be given. The respondent adduced evidence that he built the shelves (portion C) in 1955 and used it as a store and when the appellant became owner of the premises in 1961, the portion C which was included in portion A was already in existence. There was no dispute that the only access to portion C was by a ladder or staircase through portion A, of which the respondent was at all material time and is a tenant

Held:

[1] The respondent has been occupying portion A for over two decades that it is now difficult to assert that he has not acquired an interest in portion C;

[2] The finding of the learned Magistrate that portion C was part and parcel of portion A was more consistent with the evidence;

[3] The learned Magistrate had the advantage of seeing the witnesses and observing their demeanour and there was no valid ground to interfere with her finding which she found on the balance of probabilities.

[Appeal dismissed with costs.]

For the appellant - Gurdial Bakan Singh
For the respondent - N. Ramachandran

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Also found at [1982] CLJ 202